

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0337

**Sales and Use Taxes
Calendar Years 1998 and 1999**

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ISSUE(S)

I. **USE TAX** – Equipment Given Away

Authority: IC 6-2.5-3-1; IC 6-2.5-3-2; IC 6-2.5-4-6; IFB #40;

Taxpayer protests use tax assessed on equipment giveaways.

STATEMENT OF FACTS

Taxpayer operates a retail cellular phone and accessories store. The taxpayer sells telephones and accessories while A or B provides service. Upon signing a contract for a year of service, taxpayer gives the customer a free cellular telephone and provides upgrades of cellular telephones for an additional year of contract. Taxpayer also sells pagers and prepaid phone cards.

I. **Use Tax** – Equipment Given Away

DISCUSSION

Taxpayer was assessed use tax on telephone equipment it provided free to customers that signed a service contract. The telephones are given to its customers for a one-year contract for service with company A or company B. Taxpayer receives commissions for obtaining the contracts.

Taxpayer protests the use tax on equipment given to its customers. Taxpayer further states that if the Department finds the use tax due, it wants to collect and remit the tax after the fact.

The use tax “is imposed on the storage, use, or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.” IC 6-2.5-3-2(a). The term, use, “means the exercise of any right or power of ownership over tangible personal property.” IC 6-2.5-3-1 (a). The taxpayer purchased the telephones from its supplier in a retail transaction and gave them to its customers as an incentive to sign a one-year contract with companies A or B.

Sales/Use Tax Information Bulletin #40 states that whenever a person, company, or organization gives away tangible personal property as free gifts, such person, company, or organization becomes the ultimate consumer thereof for sales/use tax purposes. Therefore, the company, person or organization giving away the merchandise or prizes must pay sales tax on the purchase thereof. If the person, company or organization originally purchased such merchandise exempt from sales tax, it must pay use tax on the purchase price of such merchandise or other tangible personal property directly to the Indiana Department of Revenue.

The Department finds that the taxpayer is the ultimate consumer of the telephones used as promotional merchandise. Therefore, taxpayer must accrue use tax on the telephone. Since taxpayer did not sell the telephones to its customers, no sales tax was due from its customers.

FINDING

Taxpayer’s protest is denied.